

28 U.S.C. § 157(b)  
28 U.S.C. § 1334(b)  
28 U.S.C. § 1441(c)  
28 U.S.C. § 1452(a) & (b)  
Local Rule 2101-1

Aurora Bulb Corp. v. Tonkon, Torp 90-3103  
In re Melridge, Inc. 387-06589-P11

6/6/90                      Dist. Ct.              Published 1990 WL 84500  
                                 Frye

Plaintiff, Aurora Bulb Corp., brought a motion to remand all three claims to state court or, in the alternative, for withdrawal of reference from bankruptcy court for the first and third claims. Plaintiff also sought a determination whether the action was a core or non-core proceeding.

The court found that the first and third claims, which arose under state negligence law, were non-core, related proceedings over which the district court has jurisdiction. In addition, the whole action was removable under 28 U.S.C. § 1441(c) because the plaintiff apparently conceded that the second claim, which alleged failure of the defendant attorneys to return fees because they were not disinterested parties under 11 U.S.C. § 327, was removable.

The court denied the motion to remand because there was no equitable ground under 28 U.S.C. § 1452(b) for remand of the first and third claims. The court granted the motion for withdrawal of reference on the first and third claims because they were tort claims based on state law, which are properly litigated in district court.



U.S. DISTRICT COURT  
DISTRICT OF OREGON

FILED

JUN - 8 1990

DONALD M. CINNAMOND, CLERK

BY

DEPUTY

U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON  
FILED

JUN 21 1990

TERENCE H. DUNN, CLERK

IN THE UNITED STATES DISTRICT COURT BY LK DEPUTY

FOR THE DISTRICT OF OREGON

In re

MELRIDGE, INC., a  
Washington corporation,  
  
Debtor.

AURORA BULB CORPORATION,  
fka MELRIDGE, INC., a  
Washington corporation,

Plaintiff,

v.

TONKON, TORP, GALEN, MARMADUKE  
& BOOTH, ALBERT N. KENNEDY,  
BRUCE H. ORR, VICKI A. BALLOU,  
TIMOTHY J. CONWAY, MARY D.  
Del BALZO, HARRISON PEDDIE,  
President and CEO, JAMES A.  
MAROHN, Secretary Treasurer  
and Vice President of Finance,  
JAMES WANKO, General Sales  
Manager, RIEN VEENSTRA,  
General Production Manager,  
LOU JAFFE and John Does 1  
through 5,

Defendants.

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PAGE 1 - OPINION

CV 90-558 FR  
Bankruptcy Case  
No. 387-06589-P11

Adversary No. 90-3103

O P I N I O N

1 Stephen C. Hendricks  
Jose R. Mata  
2 Stephen C. Hendricks, P.C.  
319 S. W. Washington, Suite 520  
3 Portland, Oregon 97204-2620

4 Attorneys for Plaintiff Aurora Bulb Corporation

5 Garr M. King  
Susan E. Watts  
6 Kennedy, King & Zimmer  
2600 Pacwest Center  
1211 S. W. Fifth Avenue  
7 Portland, Oregon 97204

8 Attorneys for Defendants Tonkon, Torp, Galen,  
9 Marmaduke & Booth, Albert N. Kennedy, Bruce H.  
Orr, Vicki A. Ballou, Timothy J. Conway, and  
10 Mary D. Del Balzo

11 Robert L. Meyer  
Meyer, Habernigg & Wyse  
900 S. W. Fifth Avenue, Suite 1900  
12 Portland, Oregon 97204

13 Attorneys for Defendant Harrison Peddie

14 Susan K. Eggum  
McEwen, Gislvolld, Rankin & Stewart  
15 1600 Standard Plaza  
1100 S. W. Sixth Avenue  
16 Portland, Oregon 97204

17 Attorneys for Defendants James A. Marohn  
and James Wanko

18 Charles R. Schrader  
19 Allen, Kilmer, Schrader, Yazbeck & Chenoweth  
1600 Security Pacific Building  
20 1001 S. W. Fifth Avenue  
Portland, Oregon 97204

21 Attorneys for Defendant Rien Veenstra

22 Richard M. Botteri  
23 Weiss, DesCamp & Botteri  
2300 U. S. Bancorp Tower  
24 111 S. W. Fifth Avenue  
Portland, Oregon 97204

25 Attorneys for Defendant Lou Jaffe  
26

1 FRYE, Judge:

2 The matter before the court is the motion (#7) of plain-  
3 tiff, Aurora Bulb Corporation (Aurora Bulb) to remand this  
4 case to the Circuit Court of the State of Oregon for the  
5 County of Multnomah and, in the alternative, for withdrawal  
6 of reference from the bankruptcy court and for a determina-  
7 tion of non-core status.

#### 8 BACKGROUND

9 Aurora Bulb filed a proceeding under Chapter 11 in the  
10 United States Bankruptcy Court for the District of Oregon,  
11 where it was represented by the defendant attorneys. The  
12 other named defendants are officers and agents of Aurora  
13 Bulb.

14 Under 11 U.S.C. § 365(d)(4), leases not expressly  
15 affirmed by a debtor within sixty days of the filing date  
16 of the bankruptcy action are automatically rejected. This  
17 court affirmed and adopted the decision from the bankruptcy  
18 case that a certain SunFlor-SFO lease was rejected as a  
19 matter of law sixty-one days after the filing date because  
20 it had not been affirmed by Aurora Bulb. In re Melridge,  
21 Bankruptcy Case No. 387-06589-P11. That decision is now  
22 final. Thereafter, the defendant attorneys withdrew as  
23 counsel for Aurora Bulb in the bankruptcy case.

24 Aurora Bulb filed this action in the state court  
25 alleging three claims for relief: 1) attorney negligence  
26 in failing to affirm a valuable lease in the bankruptcy

1 proceedings; 2) failure of the attorneys to return fees paid  
2 to them because they were not disinterested parties in the  
3 bankruptcy action within the meaning of 11 U.S.C. § 327 and  
4 not entitled to represent Aurora Bulb; and 3) negligence of  
5 the officer and employee defendants in failing to provide the  
6 attorney defendants with a complete list of non-residential  
7 real estate leases.

8 The defendant attorneys removed the action to this court  
9 from the state court on the grounds that this court has juris-  
10 diction over the claims pursuant to 28 U.S.C. § 1334 and Local  
11 Rule 2101-1, and that Aurora Bulb's claims constitute core  
12 proceedings within the meaning of 28 U.S.C. § 157(b).

13 Aurora Bulb moves this court to remand all three claims  
14 to state court and, in the alternative, to withdraw the  
15 reference from the bankruptcy court for the first and third  
16 claims.

#### 17 CONTENTIONS OF THE PARTIES

18 Aurora Bulb argues that defendants improperly removed  
19 this action to the bankruptcy court. Aurora Bulb explains  
20 that a state court case must be removed in the first instance  
21 to the district court and not to the bankruptcy court because  
22 28 U.S.C. § 1452(a) provides that "[a] party may remove any  
23 claim . . . to the district court . . . if such district court  
24 has jurisdiction."

25 In the alternative, Aurora Bulb contends that this court  
26 should remand all claims on equitable grounds under section

1 1452(b). Aurora Bulb asserts that the first and third claims  
2 arise under state law, and that they should be resolved in  
3 state court. Aurora Bulb explains that these claims are at  
4 most "related to" the bankruptcy case and are not core pro-  
5 ceedings; that the procedural questions in this court are  
6 complicated and will almost certainly result in appeals; that  
7 the issue of core proceedings would be irrelevant in the state  
8 court; and that assuming that these claims are not core pro-  
9 ceedings, they are straightforward negligence claims under  
10 state law and will be most expeditiously resolved in state  
11 court.

12 In the alternative to the motion to remand, Aurora Bulb  
13 contends that this court should withdraw reference from the  
14 bankruptcy court and allow the action to proceed in this court  
15 because these claims are like tort claims and not typically  
16 litigated in bankruptcy court.

17 Defendant attorneys respond that the second claim was  
18 properly before the bankruptcy court, and therefore removal  
19 to this court is appropriate under section 1441(c), which  
20 provides that whenever a separate claim is removable if sued  
21 upon alone, the entire case may be removed; that these claims  
22 are core proceedings in that they involve the administration  
23 of the estate and seek to have funds turned over to the estate  
24 pursuant to 28 U.S.C. § 157(b)(2); and that the reference  
25 should not be withdrawn as to any of the three claims until  
26 after the pretrial order is lodged.

1 Defendant attorneys point out that the claims of Aurora  
2 Bulb involve issues peculiar to bankruptcy, and the second  
3 claim for relief involves the statutory interpretation of the  
4 bankruptcy code over which a bankruptcy court is more suited  
5 to preside. Defendant attorneys assert that the first and  
6 third claims can be resolved in this court after the pretrial  
7 order is lodged in order to preserve the right of Aurora Bulb  
8 to a jury trial, and that judicial efficiency will be pre-  
9 served by denying the motion of Aurora Bulb to resolve all  
10 pretrial matters in the bankruptcy court and then to refer  
11 the issues to which a jury trial is preserved to the district  
12 court for trial.

#### 13 ANALYSIS

14 Bankruptcy courts have full judicial power over "core  
15 proceedings," but only limited power to hear non-core or  
16 related proceedings. In re Daniels-Head & Assocs., 819 F.2d  
17 914, 917 (9th Cir. 1987). 28 U.S.C. § 157(b)(1) states:

18 Bankruptcy judges may hear and determine  
19 all cases under title 11 and all core proceedings  
20 arising under title 11, or arising in a case under  
21 title 11, referred under subsection (a) of this  
22 section, and may enter appropriate orders and  
23 judgments, subject to review under section 158  
24 of this title.

25 The distinction between core and non-core proceedings is  
26 jurisdictional. Congress may not vest the power to adjudi-  
cate, render final judgment, and issue binding orders in  
a traditional contract action arising under state law to a  
bankruptcy court without the consent of the litigants and



1 subject only to ordinary appellate review. Thomas v. Union  
2 Carbide Agricultural Products Co., 473 U.S. 568, 584 (1985).

3 The issues presented in the first and third claims for  
4 relief do not involve federal bankruptcy law. The bankruptcy  
5 issues have been resolved in the bankruptcy court, and the  
6 leases were found to be rejected. The issue presented by the  
7 first and third claims arise under state negligence law and  
8 are not "core" proceedings involving federal bankruptcy  
9 concerns such as the restructuring of the debtor-creditor  
10 relationship. In re Worcester, 811 F.2d 1224, 1229 n.5 (9th  
11 Cir. 1987).

12 The reference to the bankruptcy court on the grounds that  
13 this is a core proceeding was not proper.

14 28 U.S.C. § 1334(b) provides that "the district courts  
15 shall have original but not exclusive jurisdiction of all  
16 civil proceedings . . . related to cases under title 11."  
17 This case is related to a case under title 11, and this court  
18 is not without jurisdiction. In addition, 28 U.S.C. § 1441(c)  
19 provides that whenever a separate claim is removable if sued  
20 upon alone, the entire case may be removed. Aurora Bulb  
21 appears to concede that the second claim is removeable. Sec-  
22 tion 1441(c) provides that this court may remove the entire  
23 case.

24 Aurora Bulb asserts that this court should decline to  
25 exercise jurisdiction under 28 U.S.C. § 1452(b), which pro-  
26 vides:

1           The court to which such claim or cause of  
2           action is removed may remand such claim or cause of  
3           action on any equitable ground. An order entered  
4           under this subsection remanding a claim or cause of  
5           action, or a decision to not remand, is not review-  
6           able by appeal or otherwise.

7           As equitable grounds for remand, Aurora Bulb argues that a  
8           remand of the entire case will negate the need for this court  
9           to determine whether this is a core proceeding; that the  
10          bankruptcy court cannot protect the right of Aurora Bulb to  
11          a jury trial; that the proceedings in the bankruptcy court  
12          will be subject to review in the district court, thereby add-  
13          ing expense and delay; and that the state courts frequently  
14          resolve legal malpractice cases and present a speedy docket  
15          for resolution of this case.

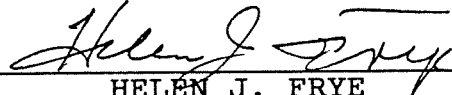
16          This court finds that there are no equitable grounds for  
17          remand of the first and third claims. This record contains no  
18          facts to support the contention of Aurora Bulb that resolution  
19          of this case will be delayed in this court.

20          Aurora Bulb agrees with the defendants in their reply  
21          memorandum that the reference to the bankruptcy court should  
22          not be withdrawn with regard to the second claim for relief.  
23          However, the tort claims based upon state law are properly  
24          litigated in this court. Pretrial rulings in the bankruptcy  
25          court will be subject to review in this court. The withdrawal  
26          of reference on the first and third claims for relief will  
27          save the parties time and expense. Aurora Bulb's motion to  
28          withdraw reference on the first and third claims is granted.

CONCLUSION

Aurora Bulb's motion for remand (#7) is denied. Aurora Bulb's alternative motion to withdraw reference on the first and third claims (#7) is granted.

DATED this 6 day of June, 1990.



HELEN J. FRYE

United States District Judge

U.S. DISTRICT COURT  
DISTRICT OF OREGON

FILED

JUN - 6 1990

DONALD M. CINNAMOND, CLERK

BY *[Signature]* DEPUTY

U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON  
FILED

JUN 21 1990

TERENCE H. DUNN, CLERK

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FOR THE DISTRICT OF OREGON

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TIMOTHY J. CONWAY, MARY D.  
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O R D E R

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PAGE 1 - ORDER

1 IT IS HEREBY ORDERED that plaintiff's motion for remand  
2 (#7) is DENIED. Plaintiff's alternative motion to withdraw  
3 reference on the first and third claims (#7) is GRANTED.

4 DATED this 6 day of June, 1990.

5   
6 HELEN J. FRYE  
7 United States District Judge  
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